The University of Chicago

FISCAL RELATIONS OF THE COUNTY AND CIVIL TOWNSHIP TO SCHOOL CORPORATIONS IN THE UNITED STATES

A PART OF A DISSERTATION SUBMITTED TO THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES IN CANDIDACY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATION

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PAUL HEATON

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CHAPTER I

STATE CONTROL OF EDUCATION

Introduction

Many states require counties and civil townships to perform certain functions in connection with the fiscal affairs of the schools. Public policy may require that these local governmental units exercise some supervision over the raising and spending of school money. Furthermore, certain functions can be performed more conveniently by the county or township than by the school corporation.

It is convenient for the state to require the services of the particular local governmental unit which is predominant throughout that state. In the New England states this unit is the town; moreover, in New England the schools developed in close relationship to the town. In most of the other states the county is the predominant unit of local government. However, in some of the north central states the county and the civil township, which is modeled somewhat after the New England town, are both important units and are required to perform various services for the schools.

This study indicates the nature of the fiscal relations of the county and civil township to the general educational systems developed by the states. In many states in which these fiscal relations are most important the schools of cities and incorporated towns are subject to the same tax or budget laws as other school systems. However, in several cities and incorporated towns the relations of the schools to the city or town council are governed by laws or charters designed for individual or special situations. Such special relationships in urban centers are not within the scope of this study of the general state plans for schools.

The sources of this study are the state constitutions, general statutes, and court decisions, which establish the powers and duties of counties and civil townships in relation to the schools.

State Constitutional Provisions for Education

Nearly every state constitution expressly makes the public school system of the state a matter of state concern. The state government has the power and the responsibility to determine how the schools shall be organized, what their relation to other local units shall be, and how they shall be financed and operated. Attempts to secure judicial restraint of state control of schools on the grounds that such control interferes with various constitutional rights of local self-government have failed. There are numerous decisions in which the court has declared that the state constitution makes it mandatory that the state provide for a state school system.[1]

There are a few state constitutions which have specific provisions directly authorizing local support of schools. In most of the southeastern states the constitutions specify methods of raising local school taxes, and the legislatures are limited by such provisions.[2] However, even in these states the state governments have the power and responsibility of making further provision for the financing and organization of the schools and the establishment of standards of administration by any means not in conflict with constitutional grants of power to local units.[3]

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[1] State ex rel. Smith v. City of St. Paul, 150 N. W. 389, 128 Minn. 87 (1914).
Mumme et al. v. Marrs, Superintendent of Public Instruction et al., 40 S. W. (2d) 31, 120 Tex. 383 (1931).
In re School Code of 1919, 108 Atl. 39, 30 Del. 406 (1919)
Miller, State Auditor v. State ex rel. Russell, 94 So. 706, 130 Miss. 564 (1923).
State ex rel. Lien v. School District No. 73 of Stillwater County, 76 Pac. (2d) 330, 106 Mont. 223 (1938).
Sloan v. School Directors of District No. 22, 26 N. E. (2d) 846, 373 Ill. 511 (1940).
American National Bank of Idaho Falls. v. Joint Independent School District No. 9, Madison County, 102 Pac. (2d) 826, 61 Idaho 405 (1940).
Although Connecticut has no constitutional mandate of the kind considered in the foregoing cases, the Connecticut Supreme Court of Errors has declared that in that state education has always been "a governmental duty resting upon the sovereign state." Bissell v. Davidson, 42 Atl. 348, 65 Conn. 183 (1934).

[2] School Board of Carroll County v. Schockley, 168 S. E. 419, 160 Va. 405 (1935).

[3] State ex rel. Board of Education of Sarasota County v.

State Utilization of Counties and Civil Townships in Making Provision for Schools

From the standpoint of the relation of the schools to the state there are no independent schools. Yet school districts are customarily regarded as independent if they are free from control by other local units, regardless of the extent of actual state control. The courts ordinarily refuse to recognize control of the schools by other local units unless such control is specifically authorized by the statutes. Throughout the country, however, the states specifically assign functions to the county or township which in many ways affect the fiscal affairs of the schools. It is apparent that such relationships are increasing rather than decreasing in importance. This increasing importance is true both of relations between the local school districts and county superintendents or county boards of education and of relations between county or district school organization and county fiscal agencies.

When the county or civil township is utilized by the state in making provision for a state school system, the local unit is serving a state purpose in contrast to its own local corporate purposes. Certain states have constitutional provisions for exclusive local control of taxes for corporate or municipal purposes.[1] In these states the courts have emphatically declared that education is a state purpose and not a corporate or municipal purpose and that therefore the state may control local taxation for schools.[2] In some of the southeastern states the courts

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Lee, State Comptroller, 1 So. (2d) (Fla.) 166 (1914).
Shelor v. Pace, Superintendent et al., 148 S. E. 726, 151 S. C. 99 (1929).
Southern Railway Company v. St. Clair County, 124 Ala. 491 (1899).
McHenry v. Ouachita Parish School Board, 125 So. 841, 169 La. 646 (1930).
St. Louis and Santa Fe Railway Company v. Benton County, 96 So. 689, 132 Miss. 789 (1923).

[1] California, Colorado, Idaho, Illinois, Kentucky, Missouri, Montana, Nebraska, Oklahoma, Utah, and Washington. In Arizona, Florida, South Carolina, South Dakota, Tennessee, and West Virginia similar constitutional provisions are found, but the legislatures themselves are not denied the power to impose local taxes. In the first group of states and also the New England states the strongest judicial assertions to the effect that education is a state rather than a corporate or municipal purpose have appeared.

[2] Fenton v. Board of Commissioners of Ada County, 119 Pac.

have spoken of education as a corporate or municipal purpose, but this interpretation does not preclude the recognition of education as a public and state purpose also.[1]

Regardless of whether the local unit which serves the state in connection with school affairs is a municipal corporation or a quasi corporation, it is an agent of the state when acting in this capacity.[2]

42, 20 Idaho 392 (1911).

Wilkinson v. Lord, Treasurer of Richardson County, 122 N. W. 699, 85 Neb. 136 (1909).

Wilmore v. Annear, Auditor et al., 65 Pac. (2d) 1433, 100 Col. 109 (1937).

City of Louisville v. Commonwealth for School Board, 121 S. W. 411, 134 Ky. 488 (1909).

Newman et al. v. Schlarb et al., 50 Pac. (2d) 36, 184 Wash. 147 (1935).

[1]State ex rel. Board of Education of Sarasota County v. Lee, State Comptroller, 1 So. (2d) (Fla.) 166 (1941).

City of Hogansville v. Farrell Heating and Plumbing Company, 132 S. E. 436, 161 Ga. 780 (1925).

Ransom et al. v. Rutherford County, 130 S. W. 459, 135 Tenn. 1 (1910).

The Constitution of South Carolina, Article X, section 5, makes education a corporate purpose of the school district.

[2]Fisher v. School District No. 1 of Silver Bow County, 34 Pac. (2d) 522, 97 Mont. 358 (1934).

Detroit v. Campbell, 239 N. W. 370, 256 Mich. 350 (1932).

Gilberton Borough School District v. Morris, 137 Atl. 864, 290 Pa. 7 (1927).

Colorado Investment and Realty Company v. Riverview Drainage District, 266 Pac. 501, 83 Col. 468 (1928).

Common School District No. 61 in Twin Falls v. Twin Falls Bank and Trust Company, 4 Pac. (2d) 342, 50 Idaho 342 (1931).

A district may even be established against the will of the people in a particular area if no limitations are found in the state constitution as to the establishment of districts. Fisher et al. v. Fay County Clerk et al., 122 N. E. 811, 288 Ill. 11 (1919). See also In re School Code of 1919, 108 Atl. 39, 30 Del. 406 (1919).

CHAPTER II

FISCAL RELATIONS OF THE TOWN TO THE SCHOOLS IN NEW ENGLAND

Provision for Schools by the Town Meeting

In New England the town is the small political unit which includes both areas of settlement and adjacent rural areas; the county is of little importance. The town is also the customary school unit in New England. There are only a few exceptions, most of which are in the cities. The town is even the school unit in some cities where there are no charter or legislative provisions entrusting the school to the control of the city.[1] It is the duty of the people in the town meeting to make appropriations for schools. They also choose a school committee to administer the schools. This school committee is the agent of the state and is free from local interference in the exercise of those powers entrusted to it by the legislature. The town meeting cannot control the expenditure of funds which it is required by law to provide for school maintenance purposes.[2] The town meeting does, however, retain control over expenditures of appropriations for buildings and may appoint a special building committee, though the school committee has the power to recommend, and in some states to actually determine, the location of school buildings.[3]

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[1] City of Stamford v. Town of Stamford, 141 Atl. 891, 107 Conn. 598 (1928).
Ogunquit Village Corporation v. Inhabitants of Wells, 122 Atl. 522, 123 Me. 207 (1923).

[2] Cobb v. Pomfret, 63 Vt. 647 (1891).
Keegan v. Town of Thompson, 130 Atl. 707, 103 Conn. 418 (1925).
In Rhode Island the town acts for the state, and the members of the school committee "act for the town as completely as does the council in its sphere." Wilbur v. Wilbur, 145 Atl. 768, 50 R. I. 136 (1929).

[3] Public Laws of New Hampshire, 1935, chap. 122, sec. 1.
General Statutes of Connecticut, Cumulative Supplement,

In Connecticut the town boards of education, before presenting their budgets to the town meetings, submit the estimates to the town boards of finance, or to the selectmen in towns which have not established boards of finance. If the estimates exceed the amounts which, in the opinion of the reviewing board, are reasonably necessary, this board may reduce the estimates. Or, if estimates are for purposes not specifically required by statute, the reviewing board may refuse to recommend such estimates.[1] After school budgets have been considered by the reviewing board and presented to the town meeting, the latter cannot make appropriations in excess of the approved estimates; nor can it make appropriations for purposes not recommended.[2]

Most school systems in New England function as a department of the town government.[3] However, in New Hampshire and Vermont town school districts are separate corporations,[4] though the people who make appropriations for the needs of the town government in the town meeting are the same as those who make appropriations for the schools in the town school meeting.

1935, sec. 298c.
Public Laws of Vermont, 1935, sec. 4329.
Public Laws of Rhode Island, 1939, chap. 178, sec. 3.
Maine Revised Statutes, 1930, chap. 19, secs. 2, 12.
Laws of Massachusetts, 1933, chap. 44, sec. 7(3).

[1] Board of Education of Town of Stamford v. Board of Finance of Town of Stamford, 16 Atl. (2d) (Conn.) 601 (1940).

[2] General Statutes of Connecticut, Cumulative Supplement, 1935, chap. 28, sec. 875c.
The Connecticut laws provide that in the five towns in which the elementary school districts have not been consolidated with the towns the town boards of education and the selectmen of the towns shall meet as joint boards to determine the amount of town allowances for wages of teachers and incidental expenses of the maintenance of the district schools. The method of appropriating such funds is discussed in Arsenal School District et al. v. Consolidated Town and City of Hartford, 180 Atl. 511, 120 Conn. 348 (1935).

[3] Rawson v. Spencer, 113 Mass. 40 (1873).
Kelly v. Brunswick School District et als., 187 Atl. 703, 134 Me. 414 (1936).
In re School Committee of North Smithfield, 58 Atl. 628, 26 R. I. 164 (1904).

[4] North Troy Graded School District v. Town of Troy, 66 Atl. 1033, 81 Vt. 16 (1907).
Farmer v. Haley, 135 Atl. 12, 100 Vt. 75 (1926).
Clough v. Osgood, 182 Atl. 169, 87 N. H. 445 (1935).

In all of the New England states the town in providing for schools is fulfilling a duty imposed upon it by the state.[1] In certain of these states failure to appropriate the minimum or necessary funds for schools may result not only in a loss of state aid but in the actual imposition of a penalty against the town.[2]

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[1] Bissell v. Davidson, 32 Atl. 348, 65 Conn. 183 (1934).
Cushing v. Inhabitants of Newburyport, 51 Mass (10 Metcalf) 508 (1845).
State v. Jackson, 52 Atl. 1021, 71 N. H. 552 (1902).
Sawyer v. Gilmore, 63 Atl. 673, 109 Me. 169 (1912).
In re School Committee of North Smithfield, 58 Atl. 628, 26 R. I. 164 (1904).

[2] Revised Statutes of Maine, 1930, chap. 19, sec. 16.
Public Laws of New Hampshire, 1925, chap. 121, secs. 1 to 7.
Laws of Massachusetts, 1933, chap. 71, sec. 34. This law provides that if the town fails to make the necessary appropriation the superior court may be petitioned to determine the amount necessary.

CHAPTER III

FISCAL RELATIONS OF COUNTY SCHOOL OFFICERS TO SCHOOLS

County School Organization: Fiscal Powers of County Boards of Education

Outside of New England the county is the important local political unit and subdivision of the state. The county has also sometimes been utilized as the area within which the local schools are organized. Twelve states, mainly in the Southeast, have county school systems under the administration of county boards of education, though these county systems do not always include all of the schools within the boundaries of the county. The states with county systems are Maryland, West Virginia, Virginia, North Carolina, Louisiana, Kentucky, Tennessee, Alabama, Florida, Georgia, New Mexico, and Utah. In all of these states there are county school taxes, which are more or less under the control of the county board of education; and in all except Utah, West Virginia, and Maryland there is also some provision for the levying of taxes by the local school districts within the county system. Several of the foregoing states also have local school districts which are entirely separate from the county school administration. Most of this latter class of districts are urban districts. In some states such separate districts share in the income from the county school tax, and in other states they do not. Table 1 shows the states in which small local tax districts are part of the county school system under the county board of education. It also indicates the districts which are independent of the county school system and whether or not they share in the county school tax.

The county boards of education are given power to levy a county school tax within certain limits in Georgia, Florida, Louisiana, Kentucky, Utah, and West Virginia, though sometimes in language so indefinite that their independence in this respect

TABLE 1

LOCAL SCHOOL TAX DISTRICTS IN STATES WITH COUNTY SCHOOL SYSTEMS

State	Taxing Districts under County Administration and Sharing in County Tax	Separate Taxing Districts Sharing in County Tax	Separate Taxing Districts Not Sharing in County Tax
Alabama..	Special districts	Municipal districts	.....
Florida..	Special districts	.....	.....
Georgia..	Local districts (unless additional county-wide tax)	.....	Cities or towns of 2,000 (optional)
Kentucky.	Subdistricts (unless additional county-wide tax)	.....	Cities in classes 1-5; graded common districts of 200 white pupils or approved by State Board
Louisiana	Local districts	.....	Special charter districts
Maryland.	.....	.....	Baltimore
New Mexico...	Rural districts (for direct charges)	Municipal independent districts with 100 pupils; union H.S. with 200 pupils; rural independent districts with 400 pupils; rural independent districts with H.S. of 140 pupils	.....
North Carolina.	Local districts of 1,000 pupils	Special charter districts of 1,000 pupils	.....
Tennessee	.....	Special charter districts and special districts	.....

TABLE 1 — Continued

State	Taxing Districts under County Administration and Sharing in County Tax	Separate Taxing Districts Sharing in County Tax	Separate Taxing Districts Not Sharing in County Tax
Utah.	.....	.....	Cities in classes 1 and 2
Virginia	Magisterial districts (bonds only)	Inc. towns of 1,000 as approved by State Board; special districts	Cities of over 5,000
West Virginia	.....	.....	.....

has been asserted only by means of the decisions of the courts.[1] Georgia is the only one of these states where county boards of education have full power to determine the county school tax in which those boards are not chosen directly by the voters.[2] In Alabama county boards of education are chosen by the voters, but the county school tax must also be approved by popular vote.[3]

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[1] Smith et al., Commissioners of Roads and Revenues v. Board of Education of Washington County, 113 S. E. 147, 153 Ga. 758 (1922).
Rabinowitz v. Douglas, 148 S. E. 740, 168 Ga. 697 (1929).
Bervaldi et al. v. State ex rel. Gibson et al., 138 So. 380, 103 Fla. 902 (1931).
Constitution of Louisiana, Art. XII, sec. 15.
Breathitt County Board of Education v. Breathitt County Fiscal Court, 223 S. W. 830, 188 Ky. 674 (1920).
Board of Education of Granite School District v. Stillman et al. 184 Pac. 159, 55 Utah 125 (1919).
Board of Education of Carbon County School District v. Bryner et al., 192 Pac. 627, 57 Utah 78 (1920).
West Virginia Code, 1937, sec. 763.

[2] In Georgia the county board of education has the unique status of a corporate authority of the county for school purposes, comparable to the county board of commissioners in relation to other county business. Smith et al., Commissioners of Roads and Revenues v. Board of Education of Washington County, 113 S. E. 147, 153 Ga. 758 (1922).

[3] Constitution of Alabama, Art. XIV, sec. 269.

In the remaining states with county school systems the county boards of education are not elected and do not have the final determination of the county school tax.[1]

Where tax levies are made by the districts within the county system in addition to the county school tax, these district levies are now largely under the control of the county boards of education rather than under the control of the trustees of the local districts, except in Georgia.[2] In most instances, however, the local voters have the final determination of the amount of the district school taxes levied.

The power of the county boards of education in the foregoing states is increasing.[3] Formerly the county boards of education used county school funds mainly for maintenance of schools; capital outlay was a district responsibility. However, there is now an increasing tendency for the states to permit the county boards of education to provide for capital outlay as well as maintenance.[4] This is an important development because it makes

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[1] Infra, pp. 32-34.

[2] Virginia Code, Supplement, 1940, sec. 698.
North Carolina Code, 1939, sec. 5780(136).
Kentucky Code, Supplement, 1941, chap. 113, sec. 4359-12a.
Alabama School Code, 1927, sec. 270.
Compiled General Laws of Florida, Permanent Supplement, 1940, sec. 892(351)(c).
Georgia Code, 1933, chap. 32, sec. 1113.
General Statutes of Louisiana, 1939, Vol. II, secs. 2243, 2995.
In New Mexico the rates of the county and district school taxes are determined by the state tax commission. New Mexico Compiled Statutes, 1929, chap. 120, secs. 604 to 607.

[3] Excellent descriptions of this trend are frequently found in discussions by the courts of the legal status of county boards of education.
County Board of Education of Bath County et al. v. Goodpaster, 84 S. W. (2d) 55, 260 Ky. 198 (1935).
Thrall et al. v. Grant County Board of Commissioners et al., 33 Pac. 908, 38 N. M. 358 (1934).

[4] There are now only two of the states having county school systems in which there is no general provision in the statutes as to the use of county school funds for capital outlay. One of these is New Mexico, in which the county may be ordered by the state tax commission to levy a county tax for school buildings only in emergencies when the district cannot provide for needed buildings and equipment. New Mexico Compiled Statutes, 1929, chap. 120, secs. 615, 623.
In Florida the county school tax is for the maintenance

possible the breaking down of old district boundary lines and the establishment of more suitable attendance units, especially for high schools. Provision for capital outlay by the local districts probably tends to support the attitude that public education is a service provided by the local property owners, with the school building as tangible evidence of their investment. However, provision for capital outlay by the county board of education would probably lessen this attitude.

County boards of education are also being given supervision of the expenditure of funds, including not only those raised by the county as a whole but those raised by the local district taxes. This is apparent in the part which these boards play in the hiring of teachers as well as in their control over other school expenditures.[1] Even in Florida, where the local tax district is given a distinct status by the state constitution, statutory provisions tend to extend the control exercised over the schools by the county board of education.[2]

In several of the states with county school systems there are municipal and other special districts which are not included in the county school system, though such districts sometimes share in the county school funds raised by county-wide school taxes. Some of these districts are now entering the county school systems. There is also evidence that districts which are within the county systems are being consolidated, and in some cases are giving

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of the county schools. The proceeds may not be used for funding floating debts, for building, or for paying the debts of the special tax school districts. Leonard et al. v. Franklin et al., 93 So. 688, 84 Fla. 402 (1922). However, the Florida Supreme Court has upheld the issue of interest-bearing time warrants payable from the county school fund for enlarging a county high school building as for "maintenance and support." Warren v. Board of Public Instruction for Hillsborough County, 97 So. 384, 86 Fla. 254 (1923).

[1] Alabama School Code, 1927, secs. 94, 95.
Compiled General Laws of Florida, Permanent Supplement, 1940, sec. 892 (106).
Georgia Code, 1933, chap. 32, sec. 909.
For the selection of teachers in Kentucky, see Wilson v. Alsip, 76 S. W. (2d) 288, 256 Ky. 466 (1934).

[2] Compiled General Laws of Florida, Permanent Supplement, 1940, sec. 892(64). It is here enacted that all special tax school districts within any county shall be "subdivisions of said county unit for school purposes."

way completely to county administration of their schools.[1]

In every one of the foregoing states with county school systems the county board of education adopts an annual school budget. There is considerable difference in the extent of the legislative provision made for these budgets by the different states. The most detailed and careful plan for all aspects of budget making is in the new school code of the state of Florida, which makes adequate provision for a rather complex county and local district organization. In the states with county school systems there is usually specific provision for the responsibility of the county superintendent as executive officer of the county board of education in making the county school budget. In comparison with the situation in the average state in which the district system is established, the budget practices of the states with county school systems appear to be far superior. This may be partly due to the more obvious need for budget laws for the larger and more complex organization of the county system. The county system is also more likely to provide a competent executive officer for all of the schools and to insure that he will be able to exercise his educational leadership in making the school budget and in other ways. Nevertheless, in certain states the county school budget laws have been deficient in that budgets have not entirely controlled the expenditures of the county boards of education. The adequacy of a budget plan is seriously limited when estimates are apt to be upset by judgments for debt.

It has been urged that the development of county school organization will mean more adequate local administration of schools and will thus forestall any necessity for an increase in state control. This has not proved to be the case in the foregoing states. It is apparent that there are educational gains such as the consolidation of schools, adoption of better administrative practices, and the extension of educational opportunity throughout all rural areas; but county school organization does not preclude increased state control in states in which large parts of the costs of public education are borne by the state itself. The county school organization often functions as a

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[1]The evidence of numerous special and local acts is too extensive to present here. Provisions which authorize separate districts to join county systems on their own option are also found in the statutes.

convenient intermediary of the state where financial conditions within the state have promoted both county school organization and state subventions and control. This condition is also apparent in Mississippi and South Carolina, which have partially developed county school systems, though the local district remains the dominant unit.

Mississippi, South Carolina, and Texas have school systems which are organized partly on a county basis under a county superintendent and a county board of education, though the district is the dominant unit of local control over the schools. In these states the county superintendents have very important fiscal powers, and the county boards of education may in certain instances advise them or approve their acts. The county boards of education are limited in their direct control of schools to specific functions such as the provision of transportation, the approval of sales of school buildings by the district, and insuring the operation of necessary schools by the district.[1]

From New York as far west as North Dakota and Missouri the district school system prevails, except that occasionally the township is the school unit. Pennsylvania, New Jersey, and Indiana make general use of the township as a school unit outside of urban areas. Other states make some use of the township as a unit for school purposes. However, there is also some development of county school organization in Pennsylvania, Ohio, Iowa, in certain counties of Michigan, and in other states, though the district or township remains the dominant unit. County school boards in Pennsylvania, Iowa, and Michigan represent the local districts and are selected by the district trustees; in Ohio the district trustees are specifically made eligible for membership on county school boards.[2] These county school boards select the county superintendents but have mainly an advisory relation to the local districts.[3]

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[1] Mississippi Code, 1930, secs. 6568, 6578, 6634. Compiled Laws of South Carolina, 1932, secs. 5348, 5354, 5369, 5371, 5474. Texas Civil Statutes (1936), Vol. VIII, arts. 2683, 2685.

[2] Mississippi is the only one of the states previously mentioned in which the county boards of education are selected by district trustees.

[3] Michigan Compiled Laws, 1929, secs. 7322-1 to 7322-12.

The district system also prevails in most of the western states, but these states have had some experience with county school organization, particularly in the maintenance of county secondary schools. Such experience with county school organization preceded the general adoption of the county school system in Utah and New Mexico. County high school plans differ from those for complete county school systems in that there is usually only a single high school to a county.[1] The reason for the establishment of this type of high school has usually been sparseness of population and the inability of weak and small common school districts to support high schools. Some of the states passed permissive laws which apparently never were adopted by any of the counties of the state. Ordinarily these laws simply permit the establishment of a county high school with its own county high school board for the county as a whole, though a particular area which is able to make other provision for a high school may withdraw from the county district. In Kansas, formerly a leading county high school state, the statutes now designate these schools as community high schools.[2] Other states besides Kansas which maintain similar schools are Nevada, California, Nebraska, Montana, Colorado, Oregon, Arizona, and South Dakota.[3] The county agricultural schools of North Dakota and Mississippi and the county vocational schools of New Jersey and Massachusetts are established to

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Iowa Code, 1939, sec. 4119.
Pennsylvania Statutes (1930), tit. 24, secs. 859, 864.
Ohio Code, 1940, secs. 4684, 4688, 4688-1.

[1]Montana, Oregon, and Nevada have now extended county high school support to include other high schools in the county in addition to the county high school.
Revised Codes of Montana, 1935, chap. 118, secs. 1262.12
Oregon School Code, 1940, tit. 111, secs. 3106 to 3113.
Nevada Statutes, 1939, chaps. 181, 183.

[2]Kansas General Statutes, 1935, sec. 2503a.

[3]Nevada Compiled Laws, 1929, secs. 5818 to 5828.
California School Code, 1937, sec. 2.1070.
Compiled Statutes of Nebraska, 1929, sec. 1002.
Revised Codes of Montana, 1935, chap. 117, sec. 1262.
Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 185.
Oregon School Code, 1940, tit. 111, sec. 3109.
Arizona Code, 1939, Vol. IV, chap. 54, sec. 913.
South Dakota Code, 1939, chap. 15, sec. 2704.

serve the county as a whole.[1]

There are isolated instances of county organization of schools which are the result of special plans which are optional for only a few of the most sparsely settled or most densely settled counties of certain states. In Oregon there are a few instances of county organization under a general plan available to all counties.[2] The county school plan in such instances is usually for the establishment of a county-wide district. However, in Nebraska, Montana, and Michigan the local district is retained as a subdistrict within the county system, and consequently county boards of education do not have full control of the schools.

Relation of the County Superintendent to the Schools and to the County

In the twelve states in which the county school organization has been developed for the operation of the general school system the county superintendent as the executive officer or secretary of the county board of education is usually responsible for making budgetary and other recommendations which he finds necessary, seeing that school laws are obeyed, and carrying out the administrative policies of the state and local boards of education. In several of these states and in states with partial county organization he is required to approve school warrants and teachers' contracts in a manner comparable to approval by an accounting and auditing officer.[3]

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[1] North Dakota Compiled Laws, 1913, secs. 1455 to 1458.
Mississippi Code, 1930, secs. 6674 to 6687.
Revised Statutes of New Jersey, 1937, Vol. I, chap. 15, secs. 39 to 58.
Laws of Massachusetts, 1933, Vol. II, chap. 74, secs. 25 to 33.

[2] Minnesota General Statutes, 1927, secs. 2780 to 2788.
Compiled Statutes of Nebraska, 1929, chap. 79, secs. 701 to 718.
Revised Codes of Montana, 1935, chap. 96, secs. 1042 to 1044.
Michigan Compiled Laws, 1929, secs. 7322-1 to 7322-12.
Oregon School Code, 1940, tit. 111, secs. 703 to 736.

[3] Alabama School Code, 1927, secs. 149 to 169.
Maryland Code, 1939, chap. 11, secs. 134 to 147.
Tennessee Code, 1938, sec. 2325.
Georgia Code, 1933, chap. 32, secs. 925, 1009.
Compiled General Laws of Florida, Permanent Supplement,

In states with district systems where there is no effective county board of education the county superintendent is usually elected by the voters. He often performs duties of the sort which would be entrusted to county boards of education in states with county school systems. These duties include provision for the transfer of pupils;[1] the payment and estimate of tuition charges;[2] the division of the assets of disorganized districts;[3] and even the determination of policies relating to the length of the school term and provision for emergencies,[4] and to the operation of small schools.[5] He apportions state and county funds among districts and often has the power to withhold these funds in case the local boards are not properly performing their duties in carrying out the educational policies of the state.[6] In certain

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1940, sec. 892(96).
Mississippi Code, 1930, secs. 6570, 6611, 6637, 6639; Mississippi Code, Supplement, 1938, secs. 2434, 2437; Mississippi Session Laws, 1940, chap. 192 (House Bill 196).
Texas Civil Statutes (1936), Vol. VIII, art. 2693.
Compiled Laws of South Carolina, 1932, sec. 5382.

[1]Revised Statutes of Missouri, 1929, sec. 18, p. 334.
Revised Codes of Montana, 1935, chap. 93, sec. 1013, chap. 117, sec. 1262.81.
Compiled Statutes of Nebraska, 1929, chap. 79, sec. 2101.

[2]California School Code, 1937, secs. 4.270 to 4.277.
Washington Revised Statutes, 1932, Vol. VI, tit. 28, chap. 122, secs. 4712 to 4717.
South Dakota Code, 1939, chap. 15, sec. 3303.

[3]Idaho Code, 1932, Vol. II, tit. 32, sec. 333.
Revised Codes of Montana, 1935, chap. 95, secs. 1028 to 1029; Revised Codes of Montana, Supplement, 1939, chap. 95, sec. 1037.4.
Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 66.
Washington Revised Statutes, 1932, Vol. VI, tit. 28, chap. 12, sec. 4725.
South Dakota Code, 1939, chap. 15, sec. 2306.

[4]Arizona Revised Code, 1939, Vol. IV, chap. 54, sec. 302.
California School Code, 1937, sec. 3.5.

[5]Oklahoma Statutes, 1931, secs. 7042, 7056d.
Texas Civil Statutes (1936), arts. 2695, 2696.
Washington Revised Statutes, 1932, Vol. VI, tit. 28, secs. 4719, 4764.
Revised Codes of Montana, 1935, chap. 95, sec. 1039.
Kansas General Statutes, 1935, chap. 72, secs. 701, 901.

[6]Oklahoma Statutes, 1931, sec. 6764.
Revised Statutes of New Jersey, 1937, Vol. I, tit. 18,

southwestern states the county superintendent serves as a budget officer and, together with the local trustees, determines the district school budget estimates.[1] In Michigan he is a member of the county tax allocation board, and in Washington he is a member of the county board of school budget review rather than merely being made available for consultation. However, in both of these states there is also a representative of the local school trustees on the county budget board.[2]

County superintendents in the states in which the district system is the prevailing type of educational organization are frequently permitted to supervise the expenditure of funds belonging to the districts in order to insure a wise use of income and the maintenance of desirable standards and to see that all needed expenditures will be made insofar as that is possible. This supervision is usually exercised in relation to rural schools.[3]

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chap. 11, sec. 2.
South Dakota Code, 1939, chap. 15, sec. 2327.
Illinois Revised Statutes, 1939, chap. 122, sec. 35.
North Dakota Compiled Laws, 1913, sec. 1216.
California School Code, 1937, secs. 4.701, 4.721.

[1]Arkansas Digest, 1933, sec. 11535(1).
Texas Civil Statutes (1936), Vol. I, art. 689a-18.
Mississippi Code, Supplement, 1938, secs. 2513 to 2533.
Yanke v. School District No. 65 of Maricopa County, 105 Pac. (2d) (Ariz.) 966 (1940) clarifies the question of procedure in Arizona.

[2]Michigan Compiled Laws, Supplement, 1937, sec. 3551-25.
Washington Revised Statutes, 1932, Vol. VI, tit. 32, sec. 4867-12.

[3]The following laws are concerned with buildings and repairs:
California School Code, 1937, secs. 6.11 to 6.114, 6.60.
Oregon School Code, 1940, tit. 111, sec. 327.
Washington Revised Statutes, 1932, Vol. VI, tit. 28, sec. 4789.
Idaho Code, 1932, Vol. II, tit. 32, chap. 2, sec. 210.
South Dakota Code, 1939, chap. 15, sec. 1006.
Arizona Code, 1939, Vol. IB, chap. 54, sec. 304.
Wisconsin Statutes, 1939, chap. 39, sec. 03(2).
The following laws are concerned with supplies:
Washington Revised Statutes, 1932, Vol. VI, tit. 28, sec. 4829.
Revised Codes of Montana, 1935, chap. 93, sec. 1019.
North Dakota Compiled Laws, 1913, sec. 1145.
Arkansas Session Laws, 1939, Act. 316.
Wisconsin Statutes, 1939, chap. 40, sec. 17.
The following laws are concerned with the use of state funds:

County superintendents in California and Arizona may have unapportioned or reserve funds in their hands for the establishment of emergency schools or for emergency transportation of children to schools. In California such funds are used with the approval of the county board of education; in Arizona the apportionment of such funds may be delegated to the county superintendent by the county governing body.[1]

California is exceptional in the extent to which county superintendents are permitted to exercise authority in the management of county school funds. California makes provision for direction by the county superintendent of the purchase of school supplies outside of city districts and authorizes city districts to participate in the plan;[2] authorizes the county superintendent to establish funds for repairing schools;[3] and requires his approval for the establishment of certain special funds within the districts.[4] The duty of examining school accounts is imposed on the county superintendent in California and also in some of the other western and midwestern states.[5]

In Oklahoma the dual system of schools has resulted in the organization of separate or minority schools on a county basis (excluding the minority schools in independent districts) in contrast to the schools of the majority which are organized on a district basis. The minority system in each county is under

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Iowa Code, 1939, sec. 4335.
Oklahoma Statutes, 1931, sec. 6943.
Nevada Compiled Laws, 1929, sec. 5799.

[1] California School Code, 1937, secs. 4.190 to 4.199.
Arizona Revised Code, 1939, Vol. IV, chap. 54, sec. 604.

[2] California School Code, 1937, secs. 6.470 to 6.478.

[3] Ibid., secs. 6.10 to 6.12.

[4] Ibid., secs. 4.280a to 4.284a, 4.280b to 4.284.

[5] Ibid., secs. 4.340 to 4.347.
Arizona Code, 1939, Vol. IV, chap. 54, sec. 301.
Nevada Compiled Laws, 1929, secs. 5661, 5661(5).
Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 20.
Kansas General Statutes, 1935, chap. 72, sec. 204.
Oklahoma Statutes, 1931, sec. 6764.
Revised Codes of Montana, 1935, chap. 92, sec. 976.
Illinois Revised Statutes, 1939, chap. 122, sec. 267.
Burns' Annotated Statutes of Indiana, 1933, tit. 28, sec. 2418.

the administration of the county board of commissioners and the county superintendent. The separate schools are not necessarily Negro schools, though they usually are. In some of the counties in Oklahoma the separate schools are the schools for white children. It is within the discretion of the county superintendent to determine which shall be the majority and which the minority schools.[1] The county superintendent files all specifications of needed buildings for minority schools with the county commissioners and arranges for the erection of such buildings. He hires all teachers and prescribes regulations for the operation of the minority schools. Although he approves all warrants against separate school funds, he is not permitted to handle and spend funds without proper authorization by the county board of commissioners.[2]

Schools are maintained in unorganized territory in several counties in Minnesota. In these counties the county superintendent is a member of the board which levies taxes and administers the schools in unorganized territory.[3]

In several states, nearly all of them midwestern or western, county superintendents are called upon to serve administrative boards for county or vocational high schools. This is the case in every state in which county high schools are numerous, except Nevada. In Kansas the county superintendent is chairman of the board; in Oregon, Nebraska, and Colorado he is secretary.[4] In North Dakota and Mississippi the county superintendent is a member and secretary of the board administering the county agricultural school.[5] In New Jersey he is a member of the county vocational school board.[6]

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[1] State ex rel. Gumm et al. v. Albritton, 224 Pac. 511, 98 Okl. 158 (1924).

[2] Oklahoma Statutes, Supplement, 1940, secs. 7040 to 7049.

[3] Minnesota General Statutes, 1927, secs. 2850 to 2668.

[4] Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 185.
Kansas General Statutes, 1935, sec. 2503a.
Revised Codes of Montana, 1935, chap. 117, sec. 1262.
Compiled Statutes of Nebraska, 1929, sec. 1002.
Oregon School Code, 1940, tit. 111, sec. 3109.
South Dakota Code, 1939, chap. 15, sec. 2704.

[5] North Dakota Compiled Laws, 1931, secs. 1455 to 1458.
Mississippi Code, 1930, secs. 6674 to 6687.

[6] Revised Statutes of New Jersey, 1937, Vol. I, chap. 15, secs. 39 to 58.

There are also several midwestern and western states in which county superintendents consider appeals of controversies between districts or between a district and a patron of the schools.[1] The resulting decision of the county school officer may have important results governing the spending or allocation of school income, although actual money judgments are beyond his jurisdiction unless specifically provided for by the statutes.[2]

The right of a legislature to bestow various powers upon county superintendents has frequently been challenged. It is now well established that authority may be delegated to such administrative officers to exercise reasonable powers in carrying out the general purpose of the legislature, even though the delegated power confers discretion upon the officer or requires him to determine terms, qualifications, or facts. Such discretion must be exercised within the limits set up by the legislature.[3] The courts will not interfere with administrative acts of discretion performed in good faith which do not involve gross or fraudulent abuse.[4]

There are no county superintendents or equivalent school officers in New England or Delaware. The divisional superintendents in New York are unimportant from the standpoint of the functions which have been discussed. Nevada now has deputy state superintendents instead of county superintendents. Each of these deputy superintendents, except one, serves more than one county.[5] In other states county school officers are elected or appointed

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[1] Idaho Session Laws, 1937, chap. 174 (Senate Bill No. 92).
Oklahoma Statutes, 1931, secs. 7056d, 7056g.
South Dakota Code, 1939, sec. 3007.

[2] School District No. 16 in Adams County v. Union High School No. 1 in Adams County, 139 Pac. 1039, 25 Col. App. 510 (1914).
Dallas v. Mosely, 286 S. W. (Tex.) 497 (1926).

[3] School District No. 5, Cherokee County v. Community School of Cherokee County et al., 69 Pac. (2d) 1102, 146 Kan. 380 (1937).
Fillmore Union High School District v. Cobb, 53 Pac. (2d) 348, 2 Cal. (2d) 26 (1935).

[4] Smithwick School District No. 6 v. Lincoln School District No. 26, 156 N. W. 587, 37 S. D. 38 (1916).
Moore et al. v. Porterfield, 241 Pac. 346, 113 Okl. 234 (1925).

[5] Nevada Compiled Statutes, 1929, secs. 5657, 5658.

in the counties which they serve.[1]

The question of whether county superintendents or other county school officers are officers of the county or of the state has come before the courts mainly in connection with disputes as to whether they are subject to laws according to which county officers are elected or appointed, removed from office, or supervised by county governing bodies. In the states in which county superintendents are appointed by county boards of education these superintendents are usually recognized by the courts as state and not county officers and are therefore not subject to the laws relating to county officers. The courts declare that county superintendents are engaged in carrying out a state purpose rather than one which pertains to the county.[2] However, in some states where county superintendents are elected the courts have settled controversies as to county control of school officers by reference to the method of election or payment of salary rather than according to the nature of the duties performed by such officers.[3]

In view of the functions which they perform, county school officers would not necessarily be subject to inappropriate measures of control by the county even though recognized as county officers. In some of the New England states school committeemen are recognized as officers of the town without any implied extension of town control over the schools beyond that which is specifically provided for by the statutes.

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[1] Division superintendents in Virginia may serve more than one county. Virginia Code, 1936, chap. 33, sec. 655.

Arkansas has abolished the office of county superintendent and has created that of county school examiner. The county examiner exercises a few powers comparable to those of county superintendents in other states. Arkansas Digest, 1933, sec. 11667.

[2] Commonwealth ex rel. Baxter, Commonwealth Attorney v. Burnett, 35 S. W. (2d) 857, 237 Ky. 473 (1931).

State ex rel. Harvey v. Stanley, 138 So. 848, 173 La. 808 (1931).

County Court of Summers County v. Nicely et al., 6 S. E. (2d) (W. Va.) 485 (1935).

Webb County v. Board of School Trustees of Laredo, 65 S. W. 878, 95 Tex. 131 (1901).

State ex rel. Osborn v. Eddington, 195 N. E. 92, 208 Ind. 160 (1935).

Hower v. Wayne County, 21 C. C. 289, 4 Lack. L. N. 203 (1899).

[3] Hollowell v. Schuyler County, 18 S. W. 498, 322 Mo. 1230 (1929).

Sheboygan County v. Gaffron, 126 N. W. 542, 143 Wis. 124 (1910).

CHAPTER IV

RELATION OF COUNTY AND TOWNSHIP GOVERNMENTS AND FISCAL OFFICERS TO THE SCHOOLS

Collection, Custody, and Protection of School Funds

The county governing bodies and county fiscal officers in various states perform such services for the schools as the collection, custody, and protection of school funds; management of school lands; apportionment of state funds to schools; approval of or floating of bond issues for school purposes; payment of expenses incurred in performing services for the schools; appropriation of county funds as grants or loans to schools; the determination of the amount or rate of the levy of county school taxes; the extension of the levy of county school taxes; and the approval of school budgets. In New England similar matters are within the discretion of the town meeting or, when they are of a ministerial nature, are made the duties of town officers. Likewise, the officers of civil townships from New York and New Jersey westward through several of the states as far as Wisconsin and Missouri perform duties of a ministerial nature for the schools.

The town treasurers in most of the New England states, the township treasurers in New Jersey, and the township supervisors in New York townships where no school treasurer has been selected, serve as ex officio school treasurers.[1] In many western and southern states county treasurers serve as ex officio school treasurers.[2] In a few other states county treasurers serve only

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[1] Revised Statutes of New Jersey, 1937, Vol. I, tit. 18, sec. 53.
New York Education Law, 1940, sec. 360.
In New Hampshire the town school district has its own treasurer. Public Laws of New Hampshire, 1926, chap. 120, sec. 13.

[2] In Missouri the county or township treasurer, depending on the type of local organization within the county, has custody of school funds. Revised Statutes of Missouri, 1929, sec. 9233.
In Arkansas, Nevada, Montana, California, Washington, and

certain classes of school districts, usually the county high school districts or the rural districts.[1] When the schools have treasurers of their own, county treasurers are still called upon to perform many services for the schools in the collection and custody of tax money and the custody of special funds such as sinking funds.[2] County treasurers or auditors also apportion

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South Carolina all district school funds are kept in the custody of the county treasurer.

Arkansas Session Laws, 1939, art. 326.
Nevada Compiled Laws, 1929, sec. 5996.
Revised Codes of Montana, 1935, chap. 113, sec. 1213.
California School Code, Supplement, 1939, sec. 4.280.
Compiled Laws of South Carolina, 1932, sec. 5396.
Washington Revised Statutes, 1932, Vol. VI, tit. 28, sec. 4867.

In Arizona county treasurers keep only those funds of school districts which are collected by county-wide tax. Arizona Code, 1939, Vol. IV, chap. 54, sec. 431.

In West Virginia the county school moneys are now collected and disbursed by the county sheriff, the office of the county financial secretary having been abolished. West Virginia Code, 1937, secs. 336 to 341, 1756 to 1759.

In Florida the county board of education selects a depository for county school funds. Compiled General Laws of Florida, Permanent Supplement, 1940, sec. 892(409).

The depository plan is also used in Texas and Mississippi.
Mississippi Code, 1930, sec. 877.
Texas Civil Statutes (1936), Vol. VIII, art. 2786.

In Utah and Kentucky county district boards select their own treasurers.

Revised Statutes of Utah, 1933, tit. 75, chap. 11, sec. 3.
Kentucky Code, 1939, sec. 4399-42.

In Alabama there is a separate office of county custodian of school funds. Alabama School Code, 1929, sec. 295.

In Louisiana, Maryland, and Georgia the county superintendents serve as school treasurers.

General Statutes of Louisiana, 1939, Vol. II, sec. 2270.
Maryland Code, 1939, Vol. II, art. 77, chap. 11, sec. 145.
Georgia Code, 1933, chap. 32, sec. 907.

[1] Oklahoma Statutes, 1931, sec. 6871.
Compiled Statutes of Nebraska, 1929, chap. 77, sec. 713.
Oregon School Code, 1940, tit. 111, secs. 1611, 3128.
Illinois Revised Statutes, 1939, chap. 122, sec. 103.
Idaho Session Laws, 1937, chap. 10 (House Bill No. 19).

[2] Compiled Statutes of Nebraska, 1929, chap. 11, sec. 101.
Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 136(1).
Oregon School Code, 1940, tit. 111, sec. 1708.
Washington Revised Statutes, 1932, Vol. VI, secs. 4953. to 4955.
Wyoming Revised Statutes, 1931, chap. 99, sec. 1006.
Arizona Code, 1939, Vol. I, chap. 10, sec. 609.
Oklahoma Statutes, 1931, sec. 6738.
Nevada Compiled Laws, 1929, sec. 5842.
North Dakota Session Laws, 1929, chap. 196 (House Bill No. 123).

state or county school funds to the schools when such apportionment is according to a routine procedure.[1] The growth of the practice of depositing all public funds in approved depositories with adequate sureties has relieved the county officers of some of their responsibilities. There remains, however, a need for more specific legislation on the matter of the responsibility of county officers at all points in their contact with school funds. This is especially true in view of the conflicting interpretations of the courts as to the responsibility of counties for county officers performing duties which are not related to ordinary county business.[2]

Management of School Lands and Permanent Funds

The management of school lands and permanent funds by the county governing body or other county officers survives in some states as a relic of the period when education was largely regarded as a matter of local concern. Formerly the county officers were not only more accessible to those who wished to lease or purchase school lands but were in a position to be better informed as to the value of such lands than were the officers at the state

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[1] California School Code, 1937, sec. 4.787.
Minnesota General Statutes, 1927, sec. 2995.
Iowa Code, 1939, sec. 4396.
Burns' Annotated Statutes of Indiana, 1933, tit. 22, sec. 28-1019.
Oklahoma Statutes, Supplement, 1940, sec. 70561.
Michigan Session Laws, 1939, sec. 7495.
Mississippi Code, 1930, sec. 6733.
Wisconsin Statutes, 1939, chap. 25, sec. 23.

[2] Some state courts hold that counties are responsible for acts of their officers when such officers are not placed under the control of the school officers in any way.
School District No. 2 in Ellis County v. Board of County Commissioners of County of Ellis et al., 25 Pac. (2d) 578, 138 Kan. 274 (1933).
Smith v. Jones, 99 N. W. 742, 136 Mich. 532 (1904).
Other state courts hold that a county officer's acts cannot bind the county when he is not acting as the agent of the county.
Board of Commissioners of Carter County v. Joint School District No. 34 in Love and Carter Counties, 272 Pac. 468, 134 Okl. 140 (1928).
Jernegan County Treasurer v. Finley, Comptroller, 38 S. W. 24, 90 Tex. 205 (1896).
Chalupnik v. Savall, 263 N. W. 352, 219 Wis. 442 (1935).

capitol. However, the centralization of control over the state's school lands has left little discretion to the county officers at present. Moreover, with the decline in farm mortgages as good investments for permanent school funds, it seems less desirable to distribute them among the counties for local investment.[1]

Apportionment of State Funds

In certain states the attempt to lighten the tax burden on real estate has resulted in the distribution of state sales and excise tax funds among the local units. The county governing body may be called upon to carry out the task of distributing these funds among the local units, including the school district, within the county. In a few instances the county governing bodies have even been given discretion as to the proportions of these funds to be distributed to the schools in consideration of the relative needs of the various local units,[2] where state constitutions have not prevented this by requiring that all state funds be appropriated by the legislature for specific purposes.[3]

Approval of Bond Issues

In a few states, particularly those which have county or township school systems or county high schools, bonds for capital outlay are issued on the credit of the county or township rather

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[1] In Mississippi and Missouri county governing bodies not only have control of county school funds but arrange to loan such funds on lands. In Indiana and Iowa the county auditors make such loans. The Constitution of South Dakota provides that the permanent school fund be divided among the counties for investment and that the counties be liable for principal and interest.
Revised Statutes of Missouri, 1929, secs. 9245 to 9256.
Mississippi Session Laws, 1940, chap. 187 (House Bill No. 547).
Iowa Code, 1939, secs. 4481 to 4490.
Burns' Annotated Statutes of Indiana, 1933, tit. 22, secs. 28-212 to 28-229.
Constitution of South Dakota, Art. VII, sec. 11.

[2] Kansas General Statutes, Supplement, 1939, chap. 79, sec. 3621.
Ohio Code, 1940, sec. 5546-20. In Ohio the county budget commission makes the apportionment.

[3] Winter v. Barrett, 186 N. E. 113, 352 Ill. 441 (1933), represents the action of the Illinois Supreme Court in disposing of a similar plan in that state.

than on the credit of the school system.[1] In other states the county governing body must approve school bond issues and may also be required to issue and sell the bonds for the schools after ascertaining that bond elections have been held or other necessary legal requirements properly complied with.[2] In a few states county officers are called upon to attest the legality of bonds which are offered for sale by the school districts.[3] In the states in which county treasurers serve as school treasurers they are usually called upon to register all school bonds and in several states are held responsible for the proper retirement of such bonds.[4] The members of the county governing body or other county officers in several states are made responsible by law for the levy of taxes

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[1] North Carolina Code, 1939, sec. 5467.
Tennessee Code, 1938, secs. 2557, 2564.
Kentucky Code, 1936, chap. 113, sec. 442-24. The Kentucky plan permits the county to construct school buildings which may be leased to school boards.
Constitution of South Carolina, Art. X, sec. 6.
Revised Codes of Montana, 1935, chap. 117, secs. 1262.12 to 1262.17.

[2] Kentucky Code, 1936, secs. 186c-6 to 186c-8.
Virginia Code, 1936, chap. 33, secs. 718c, 718d. The full faith and credit of the county is pledged to these bonds.
Georgia Code, 1933, chap. 32, secs. 1405 to 1407. This law provides for bonds for joint construction of high schools by counties and municipalities.
The following laws provide for the issue and sale of school bonds by the county governing body:
Texas Civil Statutes (1936), Vol. VIII, tit. 49, art. 2787.
Mississippi Code, 1930, sec. 6737.
Arizona Code, 1939, Vol. IV, chap. 54, sec. 422.
California School Code, 1937, sec. 4.9977.

[3] Oklahoma Statutes, 1931, sec. 6884.
Revised Codes of Montana, 1935, chap. 115, sec. 1224.23.
Wyoming Revised Statutes, 1931, chap. 99, sec. 1016.
Laws of Missouri, 1939 (House Bill No. 325).

[4] Arkansas Digest, 1933, sec. 11505.
Illinois Revised Statutes, 1939, chap. 122, sec. 224a.
Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 137.
Revised Codes of Montana, 1935, chap. 115, sec. 1224.21.
Compiled Statutes of Nebraska, 1929, chap. 11, sec. 125.
North Dakota Session Laws, 1935, chap. 194 (Senate Bill No. 216).
Nevada Compiled Laws, 1929, sec. 5841.
Oklahoma Statutes, 1931, sec. 6736.
Oregon School Code, 1940, tit. 111, sec. 1704.
Washington Revised Statutes, 1932, Vol. VI, sec. 1704.
Wyoming Revised Statutes, 1931, sec. 1015.

for the proper retirement of outstanding school bonds in the event that such levies are not made by the school boards.[1]

Approval of Short-Term Borrowing

Short-term borrowing for schools, like the issue of bonds, is within the power of the county governing bodies in certain states.[2] In other states the county governing bodies are required to approve such borrowing by the school boards.[3]

Appropriation of County Funds for Schools

There are also a few states in which the civil township or county governing bodies are permitted to appropriate moneys from the general funds of the township or county for school purposes.[4] The governing body may also be permitted or even compelled by law to grant short-term loans to schools from available county funds.[5] These practices exist in states where local governing

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[1] Idaho Code, 1932, Vol. II, tit. 32, chap. 3, sec. 328.
Michigan Compiled Laws, 1929, sec. 7463.
Revised Statutes of Missouri, 1929, sec. 9332.
Revised Codes of Montana, 1935, chap. 95, sec. 1031.
Minnesota General Statutes, 1929, sec. 2781.
Texas Civil Statutes (1936), Vol. VIII, tit. 49, art. 2815c.

[2] Tennessee Code, 1938, secs. 2522, 2533.
North Carolina Code, 1939, sec. 5610.
Mississippi Code, Supplement, 1938, sec. 2119.
Compiled Laws of South Carolina, 1932, sec. 5427. In South Carolina the county officers are "authorized and required" to borrow within certain limits, on application of the county boards of education.

[3] Virginia Code, Supplement, 1940, chap. 33, sec. 675.
California Political Code, Supplement, 1939, sec. 3719.

[4] Virginia Code, Supplement, 1940, chap. 33, sec. 698. It is also so provided in the Constitution of Virginia, sec. 14.
Tennessee Code, 1938, sec. 2346(2).
Alabama School Code, 1927, sec. 473.
Revised Statutes of New Jersey, 1937, Vol. I, tit. 18, chap. 148, sec. 4.
Nevada Compiled Laws, 1929, sec. 5922.
In North Carolina the county commissioners must supply deficits from the general county fund when school tax collections are inadequate to meet the approved budget. North Carolina Code 1939, sec. 5601.
Mississippi Code, Supplement, 1938, chap. 163, sec. 2513.

[5] Wisconsin Statutes, 1939, chap. 60, sec. 29(33).

bodies also have other important functions related to the fiscal affairs of the schools.

County Expenditures in Connection with Services for the Schools

In some states county governing bodies are required by law to make certain expenditures in connection with their services to schools. In many states the county or township must assume the expenses of collecting school taxes or of the management of school lands or funds in order that funds for school purposes will not be diminished. Usually the county governing bodies are also required to pay certain expenses of the office of the county superintendent;[1] sometimes this results in the county superintendent having difficulty in obtaining adequate funds to enable him to carry on his work of supervising the schools.[2]

Levy of County School Taxes

Most of the western states as well as those states with county school systems have county school taxes. These taxes have sometimes been regarded as state taxes in recognition of the special concern of the state for the maintenance of schools.[3] However, in order to avoid constitutional limitations on the levy or distribution of state taxes, the courts have in some cases been compelled to distinguish between school taxes and other state taxes. School taxes are declared to be for a state purpose but with local benefits and therefore not subject to constitutional limitations on

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Nevada Compiled Laws, 1929, secs. 3014, 3015.
California School Code, 1937, sec. 4.290 (mandatory).

[1] Idaho Code, 1932, Vol. II, tit. 32, chap. 2.
Illinois Revised Statutes, 1939, chap. 122, sec. 230.
South Dakota Code, 1939, chap. 15, sec. 1009.

[2] Hammond and Stephans v. Christina County, 62 S. W. (2d) (Mo.) 844 (1933), presents an excellent example of this difficulty.

[3] Eugene School District No. 4 et al. v. Fisk, County Judge et al., 79 Pac. (2d) 262, 159 Ore. 245 (1938).
Newman et al. v. Schlark et al., 50 Pac. (2d) 36, 184 Wash. 147 (1935).
Commonwealth v. Louisville National Bank, 294 S. W. 815, 220 Ky. 89 (1927).
Wilmore v. Annear, Auditor et al., 65 Pac. (2d) 1453, 100 Colo. 109 (1937).

the levy or distribution of state taxes.[1]

In most of the states the county governing bodies have no discretion in the levying of county school taxes or the approval of school budgets. In certain states they are required to levy a county school tax at a specified rate or at a rate which will provide a specified amount per pupil or per teacher for the schools of the county.[2] On the other hand, there are a few states where the county governing bodies--apart from any control over school budgets--are allowed some discretion in determining a supplementary county school tax.[3] The Mississippi law is the most important example of such discretion given to the county governing body. In Mississippi the county governing body is authorized to levy a ten-mill tax for the maintenance of schools outside of separate school districts. If this is not done, the governing body may be petitioned to submit the matter to the voters. In this state the county governing body also has discretion to levy not more than one mill on property outside of separate school districts for building purposes or for a building fund.[4] The determination of

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[1] In Kentucky the distribution of local school funds is not subject to section 186 of the state constitution, which requires that state school funds be distributed on a pro rata basis. Talbott v. State Board of Education, 52 S. W. (2d) 727, 244 Ky. 826 (1932).

[2] Minnesota General Statutes, 1927, sec. 3012.
North Dakota Compiled Laws, Supplement, 1925, sec. 1224.
Oklahoma Statutes, 1931, sec. 12368(b).
Ohio Code, Supplement, 1941, secs. 5638, 5639.
Oregon School Code, 1941, tit. 111, secs. 821 to 829.
Washington Revised Statutes, 1932, Vol. VI, tit. 28, sec. 4926.
Kansas General Statutes, Supplement, 1939, chap. 72, secs. 3002 to 3009.
South Carolina Statutes at Large, 1940, No. 1021, sec. 97.
Colorado Statutes, Cumulative Supplement, 1940, Vol. IV, chap. 156, secs. 241 to 244.
Wyoming Revised Statutes, 1931, chap. 115, sec. 129.
Idaho Code, 1932, Vol. II, tit. 32, secs. 803 to 805; Idaho Session Laws, 1937, chap. 205 (House Bill No. 188) sec. 61-806; Idaho Session Laws, 1939, chap. 81 (House Bill No. 118), sec. 61-806a.

[3] Wisconsin Statutes, 1939, chap. 59, sec. 075, chap. 70, sec. 62.
Iowa Code, 1939, sec. 4395. This law provides for a small county school tax within the limits of one-fourth and three-fourths of a mill.

[4] Mississippi Code, Supplement, 1938, secs. 2513 to 2533.

the county tax rate as well as the amount of income from other sources is thus preliminary to budget making in Mississippi, and the amount of the county tax rate is an element in the determination of the budget rather than the budget and the tax rate being determined together.

Budget Control by Governing Bodies of Counties and Civil Townships

New Jersey is the only state outside of New England in which the township governing body has any control over school budgets. In that state all school districts which occupy one township and which have not adopted another plan which is optional submit their budgets to the voters. If items are twice submitted for approval and are voted down, the governing body of the municipality in which the school district is located shall, after consultation with the school board, determine the amount or amounts necessary "to provide a thorough and efficient system of schools in the district" and certify such amounts to the county board of taxation.[1]

Several states have developed a type of school budget procedure in which the county governing body acts as a county school budget board. In certain states in the South and West the county governing body is probably qualified to act in this capacity because it has had experience in the administration of schools in the county school system, in the administration of county high schools, and in providing funds for schools through taxation and borrowing. On the other hand, in many states county governing bodies have had little experience with the administration of schools inasmuch as the part-time county commissioners are kept busy with customary county functions and welfare problems not directly related to the schools.

In North Carolina, Tennessee, Virginia, and Maryland the county board of education submits its budget to the county governing body for approval. In other states with county systems the

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[1] Revised Statutes of New Jersey, 1937, tit. 18, chap. 7, secs. 81 to 83. In consolidated school districts the governing bodies of the municipalities comprising the district act together. The plan in Connecticut whereby school budgets are submitted to the selectmen of the town in those towns in which no town board of finance has been established has been discussed in Chapter II.

the county governing body exercises only ministerial powers with respect to the levy and collection of the county school tax required by the county school budget.[1]

The North Carolina Constitution directs the counties "to exercise a general supervision and control over schools," though it does not establish the present county school system.[2] The Supreme Court of North Carolina has held that the county as an administrative unit for schools secures its power from the legislature under the constitutional provision that the schools be maintained for a six-month term each year.[3] Since the adoption of direct state support for an eight-month school term in North Carolina the county governing body has had little to do with appropriations for the maintenance of schools although it continues to be the source of county appropriations for capital outlay. However, only with the approval of the county governing body and the state school commission and after a favorable vote in districts having a school population of 1,000 or more, may the county board of education "supplement the maintenance funds now available to said district" in order to "provide a ninth month, or additional vocational teachers," or "the cost necessary for transportation." In no event may a term of more than one hundred eighty days be provided.[4] The county governing body "may approve or disapprove this supplemental budget in whole or in part, and upon approval being given, the same shall be submitted to the state school commission, which shall have the authority to approve or disapprove any object or item contained therein." The capital outlay budget is subject to the same process of review, but the budget for debt

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[1]The boards of county commissioners in Utah must approve petitions by the school boards to a joint committee consisting of the state tax commission and the state board of education to increase levies beyond the ordinary statutory maximums in order to provide "an adequate and efficient school program." Revised Statutes of Utah, 1933, tit. 75, chap. 12, sec. 11.

[2]Constitution of North Carolina, Art. VII, sec. 2.

[3]Evans v. Mecklenberg County et al., 172 S. E. 323, 205 N. C. 560 (1934). The North Carolina statutes now provide for an eight-month term. North Carolina Code, 1939, sec. 5780(126).

[4]North Carolina Code, 1939, sec. 5780(137). The legislature in 1941 provided funds for increasing the eleven year program to a twelve year program, thus taking over an expense which previously might have been provided for in the supplemental budget. North Carolina Code, Supplement, 1941, secs. 5493(1) to 5393(3).

service is submitted to the county governing body only.[1]

The county courts are the county governing bodies in Tennessee. The control of the county courts over the county school budgets is established by the statutes and has been upheld by the Tennessee Supreme Court in several cases.[2] The county court has discretion in determining the rate of the county school tax, and the Supreme Court of Tennessee has said: "The act contemplates reasonable coordination between the revenue spending governmental agencies, of which the county board of education is one, and the revenue raising governmental agencies." Moreover "without such coordination there would be a great confusion in the fiscal affairs of the counties."[3] The power of the county court extends even to the audit of expenditures of the county board of education.[4]

The Virginia statutes are not explicit as to the right of the county governing body to approve school budget estimates. However, the Supreme Court of Virginia has upheld that right in its interpretation of the legislative intent of the statutes.[5] According to Virginia law the county governing body cannot decrease the school budget during the school term "except by the same percentage of reduction as all other appropriations are reduced," not including fixed obligations.[6] It is also provided that if the county governing body refuses to levy the county school tax a tax election may be ordered if 20 per cent of the qualified voters petition the judge of the circuit court.

In Maryland the county school tax to raise funds for "current repairs, furniture in old buildings, maintenance and support" is to be at least thirty cents on the hundred dollars of taxable

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[1] North Carolina Code, 1939, sec. 5780(138).

[2] Smith et al. v. Groce et al., 12 S. W. (2d) 715, 158 Tenn. 255 (1929).
State ex rel. Board of Educational Commissioners v. O'Brien et al., 95 S. W. (2d) (Tenn.) 921 (1936).

[3] State ex rel. Brown v. Polk County et al., 54 S. W. (2d) 714, 165 Tenn. 196 (1932).

[4] Tennessee Code, 1938, sec. 2346.

[5] Scott County School Board v. Scott County Board of Supervisors, 193 S. E. 52, 169 Va. 213 (1937).

[6] Virginia Code, 1936, chap. 33, sec. 657.

valuation. The county board of education may request as much as forty cents, and the county governing body has no power to restrict such a levy.[1] However, any additional rate for the foregoing purposes and for permanent improvements must be approved by the county governing body; and if over forty cents is to be levied, specific items may be stricken out in whole or in part by that body. The statute provides: "The county commissioners shall indicate in writing what item or items of the annual budget of the county board of education have been denied in whole or in part and the reason for the denial in whole or in part of the respective items."[2]

County governing bodies in Kentucky are called "fiscal courts." County boards of education must submit itemized budgets to the fiscal courts. The law which requires the boards to do so has been held constitutional as establishing a means of declaring specifically the purpose for which taxes are to be used.[3] It is, however, mandatory that the fiscal court make the levy as requested by the board of education and approved by the state department of education if the amount of the levy is within the limitations prescribed by law and if the acts of the board of education in drawing up its estimates are free from fraud and are in good faith as shown by a budget fairly made up of items allowable under the law.[4] Thus the county governing bodies in Kentucky have no direct control over the amount of a lawful school budget, but they exercise a certain influence over boards of education through their ability to maintain controversies which involve the threat of delay in the courts.[5]

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[1] Maryland Code, 1939, Vol. II, chap. 4, sec. 56.

[2] Ibid.

[3] Fiscal Court of Jefferson County v. Jefferson County Board of Education, 244 S. W. 764, 196 Ky. 212 (1922).

[4] Breathitt County Board of Education v. Breathitt County Fiscal Court, 223 S. W. 830, 188 Ky. 674 (1920).
County Board of Education of Daviess County v. Fiscal Court of Daviess County, 298 S. W. 85, 221 Ky. 106 (1927).
County Board of Education of Marshall County v. Fiscal Court of Marshall County, 17 S. W. (2d) 1070, 229 Ky. 774 (1929).

[5] Warren County Fiscal Court v. Warren County Board of Education, 7 S. W. (2d) 490, 225 Ky. 9 (1928), presents a good example.

In some of the states with county school systems certain districts outside the system are required to submit their budgets to the county governing body or its appointees in the same way that the county board of education submits its budget. The states in which this is done and the districts which are affected are shown in Table 2.

TABLE 2

SUBMISSION OF BUDGETS OF SEPARATE SCHOOL DISTRICTS TO COUNTY OFFICERS IN STATES WITH COUNTY SCHOOL SYSTEMS

State	Districts Outside County System Which Submit Budgets	Districts Outside County System Which Do Not Submit Budgets
Kentucky...	Cities of class 5; graded common	Cities of classes 1-4
New Mexico.	Municipal indep. districts of 100 pupils; Union H.S. of 200 pupils; rural indep. dist. of 400 pupils; rural indep. dist. with 140 pupils	.....
North Carolina...	Special charter districts	.....
Tennessee..	Special districts (dependent)	Special charter districts and special districts (independent)
Virginia...	Inc. towns over 1,000	Cities of 5,000 pop.

In Maryland there are no districts outside the county systems except the city of Baltimore, which submits its school budget to the city council.

In New Mexico final allowances for schools are determined by a state agency, but the county is an intermediate agency in determining these amounts because all school budgets, including those of the county school system, are "fixed" by two county school budget commissioners in collaboration with the state educational budget auditor. These county budget commissioners are appointed by

the county boards of commissioners. One budget commissioner for each county is chosen from each of the two main political parties of the state.[1] The county budget commissioners and the state educational budget auditor "fix" the budgets, and the latter certifies these budgets to the state tax commission.[2] The state tax commission "fixes" the final budget allowances; certifies these allowances to each board of education in every county, to the board of county commissioners, and to the county treasurer; and recommends the tax rate to be levied in each county for maintenance of all the schools of the county.[3]

There are only a few states with district school systems in which the county governing body has any control over school budgets. There are different plans for school budget control by county governing bodies in Montana, Nevada, Arkansas, and Oregon. In Arizona the county governing body has control of certain items only. In Montana the members of the county governing body act as school budget supervising boards; in Nevada they set the school tax rate; and in Arkansas they act to keep boards of all districts not having a city of 2,500 inhabitants within their incomes. In Oregon the members of the county governing body make up the district boundary boards, which act as budget boards for third-class districts only.

Montana has adopted separate school budget laws for elementary schools and high schools. In both plans the members of the county governing body serve as a board of school budget supervisors, and the county superintendent is the clerk of the board. These laws apply to all public elementary and high schools in Montana.[4]

Preliminary local budgets for the elementary schools in Montana are prepared by the local trustees and adopted at a regular meeting of the trustees at which any taxpayer may appear and be heard. Such preliminary budgets are then transmitted to the county superintendent, who is clerk of the board of school budget supervisors. When all preliminary budgets have been received from the districts, the county superintendent publishes notice that they are available for public inspection in his office by

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[1] New Mexico Compiled Statutes, 1929, chap. 120, sec. 601.

[2] Ibid., secs. 601, 605. [3] Ibid., secs. 606, 607.

[4] Revised Codes of Montana, 1935, chaps. 94, 118.

the taxpayers and that a meeting of the board of school budget supervisors will commence on a certain day. The school budget supervisors may make changes or corrections in budgets which they deem "necessary and proper in any item or amount" for expenses of the general fund or for proposed expenditures to be met by the sale of bonds. They may increase or reduce any item, and when it appears to the budget board that the amount proposed to be expended for any item is in excess of the amount actually required, the board "must reduce such amount to the amount actually required."[1] However, before making any changes or corrections, the budget board must afford the trustees and clerk of the district affected a chance to be heard. If the trustees and the budget board cannot agree on the amount to be expended for any item, "the board of trustees by majority vote of all members of the board, may finally fix and determine such amount, and the amount so fixed cannot thereafter be changed by the budget board." The budget board is also authorized to reduce items when it appears that the district estimates will involve expenditures beyond expected income. This is done in conference with the trustees and clerk of the district affected, and the budget board is to "be guided, as far as possible by their wishes." Reductions involving teachers' salaries cannot be made when contracts with teachers are in effect.

Copies of elementary school budgets are sent to the state superintendent of public instruction, who enforces and supervises the provisions of the budget act.[2]

High school budgets are drawn up in much the same ways as elementary school budgets in Montana. The most important difference is that disputed items in high school budgets are submitted to a majority vote of a board of final review which consists of three members: the chairman of the board of supervisors, or a member appointed by him; the chairman of the board of the district or county high school submitting the budget; and the county superintendent.[3]

In Nevada the districts submit their budgets to the county governing body. "After considering the needs of the several school districts within their county as shown by the school budgets sub-

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[1] Ibid., chap. 94, sec. 1019.13. [2] Ibid., sec. 1019.25.

[3] Ibid., chap. 118, sec. 1263.13.

mitted," the members of the county governing body determine the amount of the county school tax which is to be levied. They must levy a tax which will produce a certain minimum per teacher and pupil, but it is within the discretion of the governing body to provide an additional amount to meet the needs of the schools as stated in the budgets.[1]

The only item of high school budgets in Nevada over which the county governing body has any control is that of transportation costs.[2]

In all districts in Arkansas not having a city of 2,500 or more inhabitants the budget is drawn up by the school directors and presented to the county court by the county school examiner. The county court may approve or modify the budget and return it to the school directors. When the budget of a district must be reduced because the district will probably be unable to operate under the budget without incurring a deficit, "the county examiner shall so notify the board of such district and shall meet with them at the time and place to be fixed by him for the purpose of revising such budget." If no agreement can be reached on a district budget, it is submitted to the state commissioner of education for "consideration, correction, and approval."[3]

In Arizona the county superintendent revises those parts of the school budgets which are to be provided for by the county school levy, but the statutes clearly provide that he has no discretion with respect to items for the purchase of sites or for erecting or purchasing school buildings. The county superintendent includes these items "in his estimate to the board of supervisors, and the board of supervisors may, in its discretion, make a sufficient levy on the property of said district to produce the amount asked for," provided that the levy is not above ten cents on each hundred dollars of assessed valuation.[4]

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[1] Nevada Compiled Laws, 1929, sec. 5799.

[2] Ibid., sec. 5828.

[3] Arkansas Digest, 1933, sec. 11535(1).
The county governing body must also approve applications for loans from the State Revolving Fund and must levy a loan fund tax as voted to repay the amount borrowed by the district. Arkansas Digest, 1933, sec. 11558.

[4] Arizona Code, 1939, Vol. IV, chap. 54, sec. 416.

The Arizona statutes also clearly provide that supplements to the school budgets are made within the discretion of the county governing body rather than that of the county superintendent. If, after school has been maintained for four months, the average daily attendance exceeds that of the previous year, the school board of a district may petition for authority to incur liabilities in excess of the estimates. The petition, with the recommendation of the county superintendent and a copy of the estimate for that year, is forwarded to the board of supervisors. After holding a hearing, the supervisors may allow liabilities to be incurred as proposed but not beyond the per capita expenditure originally intended.[1]

Oregon has a special budget plan for third-class districts. (Third-class districts have fewer than 200 pupils.) The district boundary board is the body which, according to the law, performs the functions of a budget board for these districts. The district boundary boards may curtail budgets of third-class districts. However, a hearing must first be held, after ten days' notice "to the district affected and to the party or parties complaining, if any, of the time and place of hearing."[2]

Budget Control by Special County Reviewing Committees for Schools

Washington has special county reviewing committees for school budgets only. The members of such committees include the county superintendent, one member of the local school board, and three citizens appointed by the state tax commission "who are taxpayers, registered voters, property owners, and residents of the county the budgets of which are under review and who hold no public

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[1] Ibid., sec. 608.

[2] Oregon School Code, 1940, tit. 111, sec. 906. The budgets of all other Oregon school districts except those of over 100,000 population are subject to control by a budget committee consisting of the members of the levying board and an equal number of "electors and freeholders." Oregon Compiled Laws, 1940, tit. 110, sec. 1214.

In Multnomah County there is a special tax supervising and conserving commission for the large public corporations in that particular county. This commission may make objections to budgets and may strike out unauthorized items. Unauthorized or excessive expenditures are to be certified to the district attorney for his action on them. Oregon Compiled Laws, 1940, tit. 110, secs. 1305 to 1303.

office with or without salary or who are otherwise in public employment with or without salary."[1] School budgets in all school districts in Washington except those in first- and second-class cities are made up by the boards of school directors, and after a hearing has been held and the school board has approved the budget of a district, the budget is forwarded to the county superintendent for revision and review by the county reviewing committee. The reviewing committee shall "fix and determine" the amount of the budget of the district after holding a hearing which is open to the public. The statutes specify certain percentage allocations for teachers' salaries and other purposes.[2]

In a few states where the school budgets are acted upon solely by district boards such budgets are certified to county officers for recording or for the extension of the required tax levy.[3] In such states there is no county control, for it is the duty of county officers to extend levies in accordance with the law.

Budget Control by Special County Budget Commissions

Ohio, Indiana, Michigan, and Oklahoma have special county budget boards which supervise the budgets of all local units, including the schools. The main function of these boards is the allocation of a maximum total tax rate. This plan introduces the possibility of the submission of budgets to a board which represents the interests of the various local units rather than to the county governing body, which is primarily interested in the customary functions of the county. However, if such a body consists solely of county fiscal officers, as it does in Ohio,[4] it seems

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[1] Washington Revised Statutes, 1932, Vol. VI, tit. 32, sec. 4867-12.

[2] Ibid., secs. 4867-3, 4852-1.

[3] Nevada Compiled Laws, 1929, sec. 3018.
Colorado Statutes, 1935, Vol. IV, chap. 146, sec. 32.
Kansas General Statutes, 1935, chap. 79, sec. 2931.
Iowa Code, 1939, chap. 24, secs. 370 to 390.8. In Iowa the county auditor transmits a summary of budgets and school funds to the state. He also transmits protests of local voters who request the holding of state hearings on local budgets.

[4] Ohio Code, 1940, sec. 5625-19.

doubtful whether it would be much improvement over the county governing body, except that the fiscal officers are full-time county officers presumably experienced in the performance of ministerial duties relating to fiscal affairs. From the standpoint of the schools, it would, of course, be desirable that educational interests be represented on the budget board, as they are at present in Indiana and Michigan.[1] Educational interests might well be represented when the main concern of such a board is the coordination of the budgets of all the local units in such a way as to provide for regularity and adequacy of the income of the units involved.

While the main purpose of the special county budget boards in Ohio, Indiana, Michigan, and Oklahoma is to allocate tax rates within a maximum local tax rate, increased levies may be made in Indiana in case of emergency, and in Michigan, Ohio, and Oklahoma if special rates are authorized by the voters. In Michigan and Ohio the provisions of certain city charters also create exceptions to the application of the maximum tax rate. Indiana permits the levy of a higher maximum rate against urban than against rural property.[2]

The Michigan statutes provide that certain minimum rates, including four mills for schools, shall be allocated to the various local units under ordinary circumstances.[3] In Ohio there is a specific legal requirement for the computation of minimum levies within the total maximum rate for local taxes.[4] This means, particularly in Ohio with its ten-mill limit, that there is little opportunity for actual discretion in the allocation of the total rate.

Oklahoma differs from the foregoing states in that there

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[1] Burns' Annotated Statutes of Indiana, 1933, tit. 64, sec. 310.
Michigan Compiled Laws, Supplement, 1937, sec. 3551-25.
The New Hampshire Municipal Budget Act specifically provides that in towns accepting its provisions one member of the budget committee shall be chosen by the school committee. Laws of New Hampshire, 1935, chap. 9, sec. 2.

[2] Constitution of Michigan, Art. X, sec. 21.
Constitution of Ohio, Art. XII, sec. 2.
Constitution of Oklahoma, Art. X, sec. 9.
Burns' Annotated Statutes of Indiana, 1933, tit. 64, secs. 309, 413.

[3] Michigan Compiled Laws, 1937, sec. 3551-31.

[4] Ohio Code, 1940, secs. 5625-22 to 5625-23.

is more freedom in the allotment of millage from the maximum total rate to the local units. Also, in Oklahoma, the special county budget commission (the excise board) is authorized to concern itself not only with appropriations for various funds but with specific items in school budgets. It may not reduce the total estimates below the available revenue of a district, but it may estimate the probable income, and it may contribute considerably to the determination of what that income will be.[1] When the available income of a district, including any excess levy authorized by the voters, appears to be insufficient, the excise board "shall reduce and adjust the items of the estimate to an amount within the limits of the levy."[2] Despite its exercise of such significant powers, this board contains no representatives of the schools.

Where maximum total tax rates are to be allocated, the various units involved must be required to submit budgets with detailed information as to the expenditures of previous years in order to prevent the padding of estimates with the expectation that they will be reduced in the competitive process of securing allocations. Undoubtedly school administrators have found that state-wide maximum rates present unusually difficult problems for schools in counties with the lowest valuations, though it is true that maximum rates protect property in these areas from exceptionally high tax rates.

The establishment of county budget boards has been contested as an unconstitutional delegation of taxing power by the state. However, the courts have upheld the establishment of such boards on the grounds that they exercise only administrative control when certain standards have been set up to guide them.[3] An

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[1] Morley et al. v. State ex rel. Board of Education of City of Tulsa, 47 Pac. (2d) 170, 153 Okl. 171 (1934).

[2] Oklahoma Statutes, 1931, sec. 12575.

[3] Dunn et al. v. City of Indianapolis, 196 N. E. 528, 208 Ind. 630 (1935).
State ex rel. School City of South Bend v. Thompson, Auditor et al., 6 N. E. (2d) 710, 211 Ind. 267 (1937).
Douglas et al. v. Tash, County Auditor et al., 200 N.E. 608, 209 Ind. 675 (1936).
State ex rel. City of Toledo v. Cooper, County Auditor, 119 N. E. 253, 97 Ohio St. 86 (1917).
City of Portland v. Welch, County Assessor et al., 52 Pac. 228, 154 Ore. (1936).

obstacle to the establishment of these boards has appeared when the courts have found that a budget law applying only to certain counties contains an unreasonable classification of the many different size units within that county.[1] Another important question arises when county budget laws apply to all departments and functions of all local units, some of which are administered by municipalities which have constitutional grants of home rule or self-government.[2]

General Fiscal Relationship of Schools to the County or Civil Township

In some of the southern states with county school systems the relationship between the county governing body and the schools is very close. This is true in Tennessee, North Carolina, Virginia, and to some extent in Maryland. South Carolina and Mississippi, with their partially developed county systems, have likewise recognized the convenience of imposing certain duties and responsibilities in relation to the schools on the county governing body and county school officers.

On the other hand, the school systems of the remaining southern states--though they are organized on a county basis--are administered quite independently of other county business. These states (except Georgia) have elected county boards of education which draw up their budgets quite independently of the county governing body and administer the schools of the county systems. There has been a recent tendency, however, even in these states to provide for the use of general county funds for school purposes.

In certain western states the district school system is the prevailing type of school organization, but the county and its officers have nevertheless taken an important part in the fiscal affairs of the schools. This is partly due to the need for assis-

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[1] Tichner v. City of Portland, 200 Pac. 466, 101 Ore. 294 (1921).
City of Portland v. Welch, County Assessor et al., 52 Pac. 228, 154 Ore. 286 (1936).
Sparkman v. County Budget Commission et al., 137 So. 809, 103 Fla. 242 (1931).

[2] State ex rel. City of Toledo v. Cooper, County Auditor, 119 N. E. 253, 97 Ohio St. 86 (1917).
City of Portland v. Welch, County Assessor et al., 52 Pac. 228, 154 Ore. 286 (1936).

tance to schools, many of which are in sparsely settled areas; to the practice of establishing secondary schools as county institutions; and to the absence of the civil township as an important factor in local government, with a resulting emphasis on the importance of the county. With an increase in the cost of schools and the development of high school districts, county provision for schools has remained. Such states as Arizona, California, Oregon, Montana, Nevada, and New Mexico with its county systems resemble those southern states in which the county provides funds and supplies services to the schools. On the other hand, the county has less to do with the district schools in Colorado, Wyoming, and Idaho. Though these three states have supplementary county school taxes, such taxes are determined otherwise than through the exercise of discretion by the county governing body. Utah has county districts, but these are quite independent from control by the county governing body.

In New York and throughout most of the north central states the independence of the district or township school unit from control by the county or civil township has long been maintained, although city schools are occasionally dependent on city governments. This independence is reflected in the township school organization of district or township schools in Illinois where the township school trustees have nothing to do with the affairs of the civil township. Township officers in Indiana serve both the civil township and the school township, but as separate corporations. Even the recent developments in county school organization in Pennsylvania, Ohio, Iowa, and certain counties in Michigan have no relationship to the county governing bodies or other county officers, although it is true that these county school organizations themselves have little to do with the fiscal affairs of the schools.

In certain states, however, where the schools have been independent of county or township control, influences such as the increasing cost of education and other services and the effort to avoid the maintenance of too many independent and overlapping tax districts seems now to be operating to produce a dependence of school districts on the county governing body or budget board.

It is to be observed that in eight of the states with county school systems school budgets are submitted to state departments of education. North Carolina is the only one of these in which county school budgets are subject to any control by the

county governing body. School budgets are submitted to the state superintendent in Mississippi also. On the other hand, in the foregoing states with district systems in which the county governing body has some degree of control over school budgets these budgets are not submitted to state departments or superintendents, except in Arkansas where the state superintendent attempts to insure that the districts are budgeting within their probable income.

CHAPTER V

SUITABILITY OF THE COUNTY AS A SCHOOL UNIT

County Administration of Schools

Much has been written about the suitability of the county as a unit for school administration. Regardless of whether or not some other area might be thought more suitable, the trend in most of the states which are undergoing change is toward a county system. The states are assuming increasing educational burdens under the responsibility placed upon them by their constitutions, which make education a state function. They are discovering that a county school officer and some kind of county school organization build up the backward districts, determine and safeguard necessary expenditures of the schools, and supply an intermediary through which state educational agencies can make more efficient contact with the schools.

Certain states with district or township systems have experimented with county boards of education selected by local trustees. Boards selected in this way would be more likely to have the confidence and cooperation of district school boards than county boards of education selected independently by the voters. The variation among these states as to the powers given to such boards indicates the adaptability of such a plan to different conditions. Such a board should take over many activities related to the schools which are now--because of relectance or inability of the state to grant large discretionary powers to the county superintendent--imposed on county governing bodies. The establishment of local districts is one such duty. Problems related to the proper organization of attendance units and provision for high school facilities for all parts of the county could be settled without complications in tuition and transfer allowances. Certain aspects of the attendance unit problem will persist as long as there are local tax districts, but control by a county board of education should offer a beginning in the solution of such problems.

Coordination of Local Units

Practical political considerations point to the necessity of adopting the county as a school unit. From the standpoint of the relation of the school unit to the other local units, some of the most important considerations are: the existing relationships between the schools and the county governments; the necessity for the elimination of unnecessary local officers who, for the most part, perform mere routine services and ministerial duties; the increasing significance of county activities which have some relation to child welfare; and the integration of the local tax system. All of these considerations point to the county--outside of urban areas in which the city is the dominant local unit--as the only suitable school administrative unit for coordination with other local units. Exceptional conditions of population distribution can be taken care of by the present practice of establishing a school unit extending into two or more counties, though this results in complications affecting the machinery for levying and collecting taxes. Perhaps a better solution would be a change in county boundaries because a county area which is not suitable for the administration of schools is not likely to be suitable for such county functions as the administration of public welfare programs. The foregoing considerations are, of course, related to the whole development of local planning, which in many states is organized on a county basis.

The county rather than the civil township is the emerging unit of local control of schools except in New England, New York, and Delaware. In several states even many of the cities are more or less subject to various types of county control. Both county educational organization and county fiscal control have appeared in states with district and township school units. There is certainly a need for adequate local governmental organization for the coordination of local units outside of the great cities and metropolitan areas which have their own peculiar problems involving the consolidation or coordination of local units.

The fact that education is a function of the state certainly does not prevent the state from utilizing the services of officers of the county to whatever extent may be desirable in relation to the administration of schools. The different ways in which the county has been utilized have been considered in this study. The fiscal dependence of the schools on the county

is an established policy in many states. It does not always follow, however, that county control extends to school expenditures in detail. Nor does fiscal dependence mean that public education is to be controlled solely by county home rule. The state, with its specific constitutional duty to maintain or foster a system of public education, establishes requirements as to the organization, support, and standards of the schools.